IN THE HIGH COURT OF BOMBAY AT GOA
WRIT PETITION NO.206 OF 2005

Smt.Laxmi Anant Pednekar,)
House No.337, Patelwada,)
Rivona, Sanguem Goa. .. Petitioner

Vs.

1. Government of Goa,)
Through it's Chief Secretary,)
Porvorim Goa.)

2. The Registrar of Co-operative Societies,)
Government of Goa,)
Fontainhas, Panaji Goa.)

3. The Asst.Registrar of Co-op.Societies)
(South Zone), Kiran Hall,)
Aquem, Margao Goa.)

4. The Chairman,)
Collem V.K.S.S.Society Ltd.,)
Collem, Goa.).. Respondents

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Shri Mahesh Amonkar, Advocate for the Petitioner.

Shri Guru Shirodkar, Additional Government Advocate for respondent Nos.1 to 3.

Shri A.V.Nigalye, Advocate for respondent No.4.

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CORAM : R.M.S.KHANDEPARKAR, J

DATED : 10TH FEBRUARY, 2006.

ORAL JUDGMENT :

1. Heard the learned advocates for the parties. Rule. By

consent, the rule is made returnable forthwith.

2. The petitioner challenges the judgment and order dated 7th January, 2005 passed by the Registrar of Co-operative Societies, Goa, in Co-operative Revision No.4/2002/RCS. Though the impugned order is sought to be challenged on various grounds, it is not necessary to deal with all those grounds and suffice to refer only one ground sought to be raised with reference to Section 100-A of the Maharashtra Co-operative Societies Act, 1960 as applicable to the State of Goa (hereinafter referred to as “the said Act.”).

3. It is the contention of the petitioner that though it was sought to be claimed by the respondent-society that father of the petitioner had borrowed certain amount, undisputedly the father expired in the year 1993, the proceedings under Section 100-A of the said Act were initiated in the year 1998, much after the expiry of the period of two years from the date of death of her father and yet without any notice to the petitioner or to the heirs of her father, the proceedings were initiated and continued under Section 100-A of the said Act. It is the case of the petitioner that the proceedings having been initiated against a dead person and without any notice to the legal heirs including the petitioner of her father, the impougned order is bad in law as the said issue which was sought to be raised by the

petitioner raising objection for enforcement of the certificate issued by the authority under the said Act has been illegally rejected. Reliance is sought to be placed in the matter of Shri O.K. Vasudevan v. The Shri Paras Darshan Co.op.Hsg.Soc.Ltd., reported in 2005(2) All MR 443.

4. Upon hearing the learned advocates for the parties and on perusal of the records, it is seen that the authority indeed initiated the action under Section 100-A of the Said Act and proceeded to issue certificate without issuing the notice to the petitioner or for the matter to any legal heirs of the deceased father of the petitioner, undisputedly, the petitioner's father had expired in the year 1993, the proceedings under Section 100-A of the said Act were initiated in the year 1998, obviously, if the petitioner's father was the Loanee, the proceedings under Section 100-A of the said Act could have been proceeded only after issuance of the notice to the legal heirs of the deceased father of the petitioner. The authorities having not complied with the said basic requirement of law, the entire proceedings stand vitiated and for the same reason, the impugned judgment and order cannot be sustained and is liable to be quashed and set aside and the matter to be remanded to the concerned authority to deal with the proceedings under Section 100-A of the

said Act in accordance with the provisions of law and adhering to the procedure prescribed by the rules framed under the said Act.

5. In the result, therefore, the petition succeeds. The impugned judgment and order is hereby quashed and set aside. The proceedings under Section 100-A of the said Act subsequent to the application filed by the respondent – society are also hereby quashed and set aside and the authority is directed to deal with the proceedings in accordance with the provisions of law bearing in mind the observations made hereinabove, and after hearing the parties. It is made clear that this Court has not expressed any opinion on any of the issues sought to be raised by the petitioner in this petition and all the issues are kept open. The rule is made absolute accordingly in above terms with no order as to costs.

(R.M.S.KHANDEPARKAR, J)